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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,595	01/23/2002	Jim Sowerwine	1370.01	6408
21901	7590	12/30/2003	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			HUNTER, ALVIN A	
			ART UNIT	PAPER NUMBER
			3711	16
DATE MAILED: 12/30/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/683,595	SOWERWINE, JIM
	Examiner	Art Unit
	Alvin A. Hunter	3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 October 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 14-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 14-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15 through 21 depend from claims which are cancelled, and therefore, are rejected. Claims will be examined as if the dependency is the following:

Claims 15-19 depend from claim 14;

Claim 20 depends from claim 19; and

Claim 21 depends from claim 20.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a soft foam cover made of polyethylene, does not reasonably provide enablement for the support arm to be made of polyethylene. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Specification only enables the foam cover to be made of polyethylene as disclosed in Page 5, under Detailed Description.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marier, Jr. (USPN 5375833) in view of Wateska et al. (USPN 5860874).

Marier, Jr. discloses a golf practice device for assisting in developing a proper swing (See Summary of the invention). The device comprises an elevated path guidance means (12), vertical column (18), support (14), base (16), and support arm (20) (See Entire Document). The elevated path guide means are two cylindrical rods in which separate from the device upon impact of a club and it is noted that the elevated path guide means may also be one continuous rod (See Column 2, lines 23 through 59). The elevated guide means, in which provides a reference in which the swing should correctly arc, is connected to the vertical column by means of the support arm via T-joint, or what the applicant calls a cradle interface (See Summary of the Invention and Column 2, lines 23 through 37). It is noted that various fasteners and clamps may be used on the support arm for holding the rods (See Column 2, lines 56 though 59). Though Marier, Jr. prefers the elevated path guide means to extend in two directions, would achieve the same result with one rod extending in one direction. It is also clearly apparent that the rods can be reversibly engaged. Marier, Jr. does not disclose having a cushioning material on the guide means. Wateska et al. discloses a golf swing

training device in which a resilient terminal sleeve (44) is attached to the distal end of the second leg (40B) (See Column 3, lines 37 through 50). It is apparent that because Wateska et al. discloses that the device can be used repeatedly, and the sleeve is resilient, that the sleeve is inherently a cushioning material. One having ordinary skill in the art would have found it obvious to incorporate a cushioning means, as taught by Wateska et al. to provide repeated use of the device.

2. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art, as applied to claim 14 above, in view of Macri (USPN 3554555) and admitted prior art.

The prior art, as applied to claim 14 above, does not disclose an elevated path guide means made of polyethylene or an elevated guide means engaged to a cradle interface by a magnet. Macri discloses a golf training device in which aids a golfer in perfecting his/her swing (See Background of Invention). The device comprises a trapezoidal arm (14) connected to a spring clip by a magnet (See Entire Document). The magnet cooperates in releasing the trapezoidal arm upon impact from a club (See Column 3, lines 16 through 24). It is noted in Column 3, lines 1 through 15, that the shape of the arms may vary. Macri also discloses that a resilient impact absorbing foam be used to construct the arms to absorb the impact of the club (See Column 2, lines 3 and 4 and lines 61 through 75).

It is admitted prior art that it is known with the art to utilize low-density polyethylene due to its toughness and flexibility. Therefore, one would have found it

obvious to employ low-density polyethylene foam in making the elevated path guide means, as taught by the admitted prior art, for the purpose of toughness and flexibility.

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 14 above in view of McCormick (USPN 5676604).

The prior art as applied to claim 1 above does not disclose using hook and loop fasteners for securing the elevated path guide means to the cradle interface.

McCormick discloses a golf training device in which two saddles (36) with VELCRO on one side are attached to a swing arm (28) that is attached to club head guide (22) (See Column 2). The VELCRO serves to hold the club head guide (22) in place until dislodged due to contact of a golf club (See Summary of the Invention). One having ordinary skill in the art would have found it obvious to use hook and loop fasteners, as taught by McCormick, in order to releasably dislodge the elevated guide means upon impact.

4. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 14 above in view of admitted prior art

It is admitted prior art that a V-shaped base configuration is common within art for supporting structures. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a V-shaped base configuration having a juncture being that it is common within the art for supporting structures. It also admitted prior art that is common within the art to place weight on the end of elements to stabilize and further support structures. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place weights on

the distal ends of the base in order to stabilize the device while in use and to further support the device.

5. Claim 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over The prior art as applied to claim 20 above further in view of Lambert (USPN 3886700).

The prior art as applied to claim 20 above does not disclose having an assembly guide cord to assisting in assembling and disassembling the device. Lambert discloses a collapsible structure comprising a plurality of elongated element attached together by a flexible strand in order to facilitate easy assembly and collapsibility (See Entire Document). One having ordinary skill in the art would have found it obvious to have a guide cord connecting a plurality of member, as taught by Lambert, in order to allow easy assembly and collapsibility. The applicant does not disclose why it is critical for the assembly guide cord to be elastic, therefore, would have been an obvious design choice. One having ordinary skill in the art would have found the assembly cord of Lambert to perform equally as well being that the both perform the same function, which is connecting a plurality of members in order to allow easy assembly and collapsibility.

#### ***Response to Arguments***

Applicant's arguments filed October 17, 2003 have been fully considered but they are not persuasive. The applicant argues prima-facie obviousness has not been established because Marier, Jr. teaches the elevated guide means to extending two directions and does not teach the guide extending in only one direction. The examiner disagrees. In establishing prima-facie obviousness, absolute predictability is not required. The applicant has one guide in which, not at the same time, extends in two

directions, as trailing or leading direction. Though the applicant attempts to argue that there is some reasonable expectation from that of the above combination of references, the applicant has not shown such, therefore, capability is of legal significance. Marier, Jr. shows a guide extending in a trailing and leading direction. It is clearly apparent that the applicant's invention does not ascertain any advantage over that of Marier, Jr. For these reasons, the above rejection has been sustained.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is 703-306-5693. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Vidovich, can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

AAH

Alvin A. Hunter, Jr.

  
Steven Wong  
Primary Examiner